

BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION

IN RE: Watco Communities LLC)
Dist. 5, Map 61, Control Map 61, Parcel 65.01) Sevier County
Commercial Property)
Tax Year 2006)

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued as follows:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$436,200	\$4,197,000	\$4,633,200	\$1,853,280

An appeal has been filed on behalf of the property owner with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on March 27, 2007 in Sevierville, Tennessee. The taxpayer was represented by registered agent Robert J. Fletcher. The assessor of property, Johnny King, represented himself and was assisted by staff appraisers Chris Parrott and Randy Watts.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This appeal concerns the value of the Mountainbrook Village Retirement Community located at 700 Markhill Drive in Sevierville, Tennessee. Subject facility consists of a 13.98 acre site improved with 25 buildings. Twenty-three of the buildings are one-story independent living apartments with four or five units each. Another building contains assisted living units/Alzheimer's units and administrative/common area space. The remaining building is a one-story maintenance/accessory building.

The taxpayer contended that subject property should be valued at \$3,350,000. In support of this position, Mr. Fletcher testified that the taxpayer purchased subject property at a foreclosure sale on May 30, 2003 for \$2,000,000 and has since spent \$1,000,000 in renovations and improvements. In addition, Mr. Fletcher introduced cost and income approaches he asserted support value indications of \$3,450,000 and \$3,250,000 respectively. Finally, Mr. Fletcher noted that almost the entire tract is located in a FEMA designated flood zone.

The assessor contended that subject property should remain valued at \$4,633,200. In support of this position, Mr. King testified that unlike Mr. Fletcher he did not believe the current use of subject property represents the highest and best use. Mr. King stated that numerous hotel rooms in the area have been converted into condominiums that sell for \$80,000 - \$100,000 per unit. Mr. King asserted that such a use constitutes the highest and best use of subject property.

In addition to Mr. King's testimony, the valuation analysis of Mr. Parrott was offered into evidence. Essentially, Mr. Parrott analyzed sales of both apartments and nursing home/assisted living facilities which he maintained support the current appraisal of subject property. Mr. Parrott also included in his analysis a copy of the property record card (cost approach) which is the basis for the current appraised value of \$4,633,200.

The basis of valuation as stated in Tennessee Code Annotated Section 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values . . ."

General appraisal principles require that the market, cost and income approaches to value be used whenever possible. Appraisal Institute, *The Appraisal of Real Estate* at 50 and 62. (12th ed. 2001). However, certain approaches to value may be more meaningful than others with respect to a specific type of property and such is noted in the correlation of value indicators to determine the final value estimate. The value indicators must be judged in three categories: (1) the amount and reliability of the data collected in each approach; (2) the inherent strengths and weaknesses of each approach; and (3) the relevance of each approach to the subject of the appraisal. *Id.* at 597-603.

The value to be determined in the present case is market value. A generally accepted definition of market value for ad valorem tax purposes is that it is the most probable price expressed in terms of money that a property would bring if exposed for sale in the open market in an arm's length transaction between a willing seller and a willing buyer, both of whom are knowledgeable concerning all the uses to which it is adapted and for which it is capable of being used. *Id.* at 21-22.

After having reviewed all the evidence in the case, the administrative judge finds that the subject property should remain valued at \$4,633,200 based upon the presumption of correctness attaching to the decision of the Sevier County Board of Equalization.

Since the taxpayer is appealing from the determination of the Sevier County Board of Equalization, the burden of proof is on the taxpayer. See State Board of Equalization Rule 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Quality Control Board*, 620 S.W.2d 515 (Tenn. App. 1981).

The administrative judge finds that the fair market value of subject property as of January 1, 2006 constitutes the relevant issue. The administrative judge finds that the State Board of Equalization has historically refused to consider foreclosure sales as indicative of market value. See, e.g., *Armed Services Mutual Benefit Assoc.* (Assessment Appeals Commission, Davidson Co., Tax Years 1991 & 1992); *George W. Hussey* (Assessment

Appeals Commission, Davidson Co., Tax Year 1992); and *Richard F. Laroche* (Assessment Appeals Commission, Rutherford Co., Tax Year 1994).

The administrative judge finds that the \$3,000,000 spent to acquire and renovate subject property may very well be indicative of investment value. However, investment value and market value are not synonymous. See Appraisal Institute, *The Dictionary of Real Estate Appraisal* (4th ed. 2002) which defines the term “investment value” as follows:

The specific value of an investment to a particular investor or class of investors based on individual investment requirements; distinguished from market value, which is impersonal and detached.

The administrative judge finds Mr. Fletcher testified that subject property has been leased since June of 2005 for \$35,000 per month or \$420,000 per annum. Mr. Fletcher stated the lease is between related parties.

The administrative judge finds that Mr. Fletcher’s income approach cannot provide a basis of valuation because he simply utilized the lease between related parties to arrive at his estimate of effective gross income.¹ Respectfully, the administrative judge finds that no rent comparables were introduced into evidence to substantiate Mr. Fletcher’s assumption that the lease reflects market rent.

The administrative judge finds that Mr. Fletcher’s cost approach also cannot provide a basis of valuation absent additional evidence. In particular, the administrative judge finds no evidence was introduced to substantiate deducting additional functional and external obsolescence of 20% and 2.5% respectively. This results in accrued depreciation of 66.5% given the initial 44% deduction for physical depreciation and functional obsolescence. The administrative judge finds that disallowing those two deductions results in a revised value indication of in excess of the current appraised value. Based upon the foregoing, the administrative judge finds it unnecessary to further address the assessor’s proof.

ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax year 2001:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$436,200	\$4,197,000	\$4,633,200	\$1,853,280

It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.


Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

¹ Mr. Fletcher assumed no vacancy and credit loss in his analysis.

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or
3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 17th day of April, 2007.



MARK J. MINSKY
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: Mr. Robert J. Fletcher
Johnny D. King, Assessor of Property